
SUBSTITUTE HOUSE BILL 2509

State of Washington

56th Legislature

2000 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Ballasiotes, Dickerson, Lovick, Conway, Ogden, Ruderman, Kessler, McDonald, Regala, Stensen, Hurst, Veloria, Santos, Wood, Lantz, Edmonds, Keiser and Kenney; by request of Attorney General)

Read first time 02/04/2000. Referred to Committee on .

1 AN ACT Relating to dependent persons; amending RCW 9.94A.370,
2 9A.42.040, and 9A.42.045; reenacting and amending RCW 9.94A.030 and
3 9.94A.310; adding a new section to chapter 9A.42 RCW; adding a new
4 chapter to Title 5 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds
7 that the number of vulnerable adults is growing because of demographics
8 and longer life expectancies. Crimes against vulnerable adults, and
9 neglect, exploitation, abuse, and sexual abuse of vulnerable adults are
10 increasing. The state has a compelling interest in making it possible
11 for the courts to adequately and fairly conduct cases involving
12 vulnerable adult victims.

13 The legislature further finds that court proceedings involving
14 vulnerable adults may be hindered or precluded by memory problems
15 associated with the length of time between the act or crime and the
16 related court proceedings, even though the vulnerable adult made a
17 reliable statement about the crime or event shortly after it occurred.
18 Court proceedings involving vulnerable adults may also be hindered or
19 precluded by the unavailability of the vulnerable adults as witnesses

1 because of their shorter life expectancy, their physical or mental
2 condition, or because their participation in the trial or proceeding
3 has a substantial likelihood of resulting in significant emotional,
4 mental, or physical harm.

5 The legislature intends that this chapter make admissible as
6 evidence the reliable hearsay of vulnerable adults beyond what is
7 currently admissible, while respecting the constitutional rights of
8 other parties. The legislature recognizes that the courts have
9 implemented the child hearsay statute, RCW 9A.44.120, to balance
10 concerns about the reliability of children's hearsay statements with
11 the public interest in facilitating court cases involving the
12 protection of children. The legislature recognizes similar issues are
13 present in proceedings involving vulnerable adult victims. For that
14 reason, courts may find guidance in *State v. Ryan*, 103 Wn.2d 165
15 (1984), while recognizing the different factors set forth in this
16 chapter as well as other factors that may apply to vulnerable adults.
17 The legislature intends this chapter to facilitate fair and just
18 adjudication of criminal, juvenile, and civil cases involving
19 vulnerable adults in this state.

20 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions set forth in
21 this section apply throughout this chapter.

22 (1) "Abuse" means willfully or negligently causing any bodily
23 injury, pain, or mental anguish to a vulnerable adult.

24 (2) "Exploitation" means:

25 (a) Obtaining, using, or attempting to obtain or use, the property
26 or services of a vulnerable adult for the benefit of someone other than
27 the vulnerable adult, by:

28 (i) Deception, intimidation, or the use of undue influence; or

29 (ii) A person who knows or reasonably should know that the
30 vulnerable adult lacks the capacity to consent; or

31 (b) Forcing, compelling, or exerting undue influence over a
32 vulnerable adult causing the vulnerable adult to perform a service or
33 act, or to refrain from acting, in a way that benefits someone other
34 than the vulnerable adult.

35 (3) "Neglect" means the failure by one having a duty of care to a
36 vulnerable adult to provide the goods or services necessary to maintain
37 the physical or mental health of a vulnerable adult. Neglect may be
38 based on either repeated conduct, or on a single incident or omission

1 that demonstrates a serious disregard for the safety or welfare of a
2 vulnerable adult.

3 (4) "Sexual abuse" means any form of nonconsensual sexual contact,
4 including but not limited to indecent liberties, rape, sexual coercion,
5 sexually explicit photographing, and sexual harassment. Sexual abuse
6 also means any sexual contact, whether or not it is consensual,
7 between:

8 (a) Any person and a person who has a mental incapacity or is
9 physically helpless, both as defined in RCW 9A.44.010; or

10 (b) A vulnerable adult living in a facility or receiving service
11 from a program authorized under chapter 71A.12 RCW, and a staff person
12 of the facility or employee of the program, unless the staff person is
13 also a resident or client of the facility or program.

14 (5) "Sexual contact" means any touching of the sexual or other
15 intimate parts of a person done for the purpose of gratifying the
16 sexual desire of either party or a third party.

17 (6) "Unavailable" means the vulnerable adult is unavailable under
18 ER 804.

19 (7) "Vulnerable adult" means a person:

20 (a) Sixty years of age or older who has the functional, mental, or
21 physical inability to care for himself or herself, or his or her
22 finances; or

23 (b) Who is eighteen years of age or older and has been found by a
24 court to be incapacitated under chapter 11.88 RCW; or

25 (c) Who is eighteen years of age or older and has a developmental
26 disability as defined under RCW 71A.10.020; or

27 (d) Who is eighteen years of age or older and a resident of a
28 facility for adults licensed or required to be licensed by the
29 department of social and health services, including but not limited to
30 nursing homes, adult family homes, and boarding homes; or

31 (e) Who is eighteen years of age or older and receives services
32 from a home health, hospice, or home care agency as defined in chapter
33 70.127 RCW, or receives similar services from an individual.

34 NEW SECTION. **Sec. 3.** HEARSAY ADMISSIBLE. An out-of-court
35 statement made by a vulnerable adult describing a crime committed
36 against, or neglect, exploitation, abuse, or sexual abuse of a
37 vulnerable adult declarant, is admissible in evidence in a civil,
38 criminal, or juvenile offense adjudication proceeding if:

1 (1) The court finds in a hearing that the time, content, and
2 circumstances of the statement provide sufficient indicia of
3 reliability. This hearing shall be conducted outside the presence of
4 a jury in the case of a jury trial. In making its determination, the
5 court may consider (a) the reliability of the declarant; (b) the timing
6 of the declaration; (c) whether the declarant had an apparent motive to
7 lie; (d) the relationship of the declarant to the witness; (e) the
8 relationship of the declarant to the actor; (f) whether the declarant
9 made the statement to more than one person; (g) the mental and physical
10 condition and cognitive ability of the vulnerable adult at the time the
11 statement was made; (h) the nature and duration of the crime, neglect,
12 abuse, sexual abuse, or exploitation; and (i) any other factor deemed
13 appropriate; and

14 (2) The vulnerable adult either:

15 (a) Testifies; or

16 (b) The court finds the vulnerable adult is unavailable as a
17 witness, but when the vulnerable adult is unavailable as a witness, the
18 statement may be admitted only if there is corroborative evidence of
19 the act.

20 NEW SECTION. **Sec. 4.** NOTICE REQUIRED. A statement may not be
21 admitted under this chapter unless the proponent of the statement gives
22 notice to the adverse party of his or her intention to offer the
23 statement and the particulars of the statement sufficiently in advance
24 of the proceedings to provide the adverse party with a fair opportunity
25 to challenge the admissibility of the statement at a hearing. The
26 court shall state the basis for its ruling by making specific findings
27 of fact on the record.

28 **Sec. 5.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999
29 c 196 s 2 are each reenacted and amended to read as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

32 (1) "Collect," or any derivative thereof, "collect and remit," or
33 "collect and deliver," when used with reference to the department of
34 corrections, means that the department, either directly or through a
35 collection agreement authorized by RCW 9.94A.145, is responsible for
36 monitoring and enforcing the offender's sentence with regard to the
37 legal financial obligation, receiving payment thereof from the

1 offender, and, consistent with current law, delivering daily the entire
2 payment to the superior court clerk without depositing it in a
3 departmental account.

4 (2) "Commission" means the sentencing guidelines commission.

5 (3) "Community corrections officer" means an employee of the
6 department who is responsible for carrying out specific duties in
7 supervision of sentenced offenders and monitoring of sentence
8 conditions.

9 (4) "Community custody" means that portion of an offender's
10 sentence of confinement in lieu of earned release time or imposed
11 pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW
12 9.94A.383, served in the community subject to controls placed on the
13 offender's movement and activities by the department of corrections.
14 For offenders placed on community custody for crimes committed on or
15 after July 1, 2000, the department shall assess the offender's risk of
16 reoffense and may establish and modify conditions of community custody,
17 in addition to those imposed by the court, based upon the risk to
18 community safety.

19 (5) "Community custody range" means the minimum and maximum period
20 of community custody included as part of a sentence under RCW
21 9.94A.120(11), as established by the sentencing guidelines commission
22 or the legislature under RCW 9.94A.040, for crimes committed on or
23 after July 1, 2000.

24 (6) "Community placement" means that period during which the
25 offender is subject to the conditions of community custody and/or
26 postrelease supervision, which begins either upon completion of the
27 term of confinement (postrelease supervision) or at such time as the
28 offender is transferred to community custody in lieu of earned release.
29 Community placement may consist of entirely community custody, entirely
30 postrelease supervision, or a combination of the two.

31 (7) "Community service" means compulsory service, without
32 compensation, performed for the benefit of the community by the
33 offender.

34 (8) "Community supervision" means a period of time during which a
35 convicted offender is subject to crime-related prohibitions and other
36 sentence conditions imposed by a court pursuant to this chapter or RCW
37 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
38 may include crime-related prohibitions and other conditions imposed
39 pursuant to RCW 9.94A.120(5). Where the court finds that any offender

1 has a chemical dependency that has contributed to his or her offense,
2 the conditions of supervision may, subject to available resources,
3 include treatment. For purposes of the interstate compact for out-of-
4 state supervision of parolees and probationers, RCW 9.95.270, community
5 supervision is the functional equivalent of probation and should be
6 considered the same as probation by other states.

7 (9) "Confinement" means total or partial confinement as defined in
8 this section.

9 (10) "Conviction" means an adjudication of guilt pursuant to Titles
10 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
11 acceptance of a plea of guilty.

12 (11) "Court-ordered legal financial obligation" means a sum of
13 money that is ordered by a superior court of the state of Washington
14 for legal financial obligations which may include restitution to the
15 victim, statutorily imposed crime victims' compensation fees as
16 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
17 drug funds, court-appointed attorneys' fees, and costs of defense,
18 fines, and any other financial obligation that is assessed to the
19 offender as a result of a felony conviction. Upon conviction for
20 vehicular assault while under the influence of intoxicating liquor or
21 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
22 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
23 legal financial obligations may also include payment to a public agency
24 of the expense of an emergency response to the incident resulting in
25 the conviction, subject to the provisions in RCW 38.52.430.

26 (12) "Crime-related prohibition" means an order of a court
27 prohibiting conduct that directly relates to the circumstances of the
28 crime for which the offender has been convicted, and shall not be
29 construed to mean orders directing an offender affirmatively to
30 participate in rehabilitative programs or to otherwise perform
31 affirmative conduct. However, affirmative acts necessary to monitor
32 compliance with the order of a court may be required by the department.

33 (13) "Criminal history" means the list of a defendant's prior
34 convictions and juvenile adjudications, whether in this state, in
35 federal court, or elsewhere. The history shall include, where known,
36 for each conviction (a) whether the defendant has been placed on
37 probation and the length and terms thereof; and (b) whether the
38 defendant has been incarcerated and the length of incarceration.

1 (14) "Day fine" means a fine imposed by the sentencing judge that
2 equals the difference between the offender's net daily income and the
3 reasonable obligations that the offender has for the support of the
4 offender and any dependents.

5 (15) "Day reporting" means a program of enhanced supervision
6 designed to monitor the defendant's daily activities and compliance
7 with sentence conditions, and in which the defendant is required to
8 report daily to a specific location designated by the department or the
9 sentencing judge.

10 (16) "Department" means the department of corrections.

11 (17) "Determinate sentence" means a sentence that states with
12 exactitude the number of actual years, months, or days of total
13 confinement, of partial confinement, of community supervision, the
14 number of actual hours or days of community service work, or dollars or
15 terms of a legal financial obligation. The fact that an offender
16 through "earned release" can reduce the actual period of confinement
17 shall not affect the classification of the sentence as a determinate
18 sentence.

19 (18) "Disposable earnings" means that part of the earnings of an
20 individual remaining after the deduction from those earnings of any
21 amount required by law to be withheld. For the purposes of this
22 definition, "earnings" means compensation paid or payable for personal
23 services, whether denominated as wages, salary, commission, bonuses, or
24 otherwise, and, notwithstanding any other provision of law making the
25 payments exempt from garnishment, attachment, or other process to
26 satisfy a court-ordered legal financial obligation, specifically
27 includes periodic payments pursuant to pension or retirement programs,
28 or insurance policies of any type, but does not include payments made
29 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
30 or Title 74 RCW.

31 (19) "Drug offense" means:

32 (a) Any felony violation of chapter 69.50 RCW except possession of
33 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
34 controlled substance (RCW 69.50.403);

35 (b) Any offense defined as a felony under federal law that relates
36 to the possession, manufacture, distribution, or transportation of a
37 controlled substance; or

1 (c) Any out-of-state conviction for an offense that under the laws
2 of this state would be a felony classified as a drug offense under (a)
3 of this subsection.

4 (20) "Escape" means:

5 (a) Escape in the first degree (RCW 9A.76.110), escape in the
6 second degree (RCW 9A.76.120), willful failure to return from furlough
7 (RCW 72.66.060), willful failure to return from work release (RCW
8 72.65.070), or willful failure to be available for supervision by the
9 department while in community custody (RCW 72.09.310); or

10 (b) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as an escape
12 under (a) of this subsection.

13 (21) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
16 and-run injury-accident (RCW 46.52.020(4)); or

17 (b) Any federal or out-of-state conviction for an offense that
18 under the laws of this state would be a felony classified as a felony
19 traffic offense under (a) of this subsection.

20 (22) "Fines" means the requirement that the offender pay a specific
21 sum of money over a specific period of time to the court.

22 (23) "First-time offender" means any person who is convicted of a
23 felony (a) not classified as a violent offense or a sex offense under
24 this chapter, or (b) that is not the manufacture, delivery, or
25 possession with intent to manufacture or deliver a controlled substance
26 classified in Schedule I or II that is a narcotic drug or flunitrazepam
27 classified in Schedule IV, nor the manufacture, delivery, or possession
28 with intent to deliver methamphetamine, its salts, isomers, and salts
29 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
30 profit of any controlled substance or counterfeit substance classified
31 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
32 marihuana, who previously has never been convicted of a felony in this
33 state, federal court, or another state, and who has never participated
34 in a program of deferred prosecution for a felony offense.

35 (24) "Home detention" means a program of partial confinement
36 available to offenders wherein the offender is confined in a private
37 residence subject to electronic surveillance.

1 (25) "Most serious offense" means any of the following felonies or
2 a felony attempt to commit any of the following felonies, as now
3 existing or hereafter amended:

4 (a) Any felony defined under any law as a class A felony or
5 criminal solicitation of or criminal conspiracy to commit a class A
6 felony;

7 (b) Assault in the second degree;

8 (c) Assault of a child in the second degree;

9 (d) Child molestation in the second degree;

10 (e) Controlled substance homicide;

11 (f) Extortion in the first degree;

12 (g) Incest when committed against a child under age fourteen;

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Robbery in the second degree;

21 (p) Sexual exploitation;

22 (q) Vehicular assault;

23 (r) Vehicular homicide, when proximately caused by the driving of
24 any vehicle by any person while under the influence of intoxicating
25 liquor or any drug as defined by RCW 46.61.502, or by the operation of
26 any vehicle in a reckless manner;

27 (s) Any other class B felony offense with a finding of sexual
28 motivation, as "sexual motivation" is defined under this section;

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.125;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator is
7 included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
10 through July 27, 1997.

11 (26) "Nonviolent offense" means an offense which is not a violent
12 offense.

13 (27) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case is under superior court
16 jurisdiction under RCW 13.04.030 or has been transferred by the
17 appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. Throughout this chapter, the terms "offender" and
19 "defendant" are used interchangeably.

20 (28) "Partial confinement" means confinement for no more than one
21 year in a facility or institution operated or utilized under contract
22 by the state or any other unit of government, or, if home detention or
23 work crew has been ordered by the court, in an approved residence, for
24 a substantial portion of each day with the balance of the day spent in
25 the community. Partial confinement includes work release, home
26 detention, work crew, and a combination of work crew and home detention
27 as defined in this section.

28 (29) "Persistent offender" is an offender who:

29 (a)(i) Has been convicted in this state of any felony considered a
30 most serious offense; and

31 (ii) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.360; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
2 of a child in the first degree, child molestation in the first degree,
3 rape in the second degree, rape of a child in the second degree, or
4 indecent liberties by forcible compulsion; (B) murder in the first
5 degree, murder in the second degree, homicide by abuse, kidnapping in
6 the first degree, kidnapping in the second degree, assault in the first
7 degree, assault in the second degree, assault of a child in the first
8 degree, or burglary in the first degree, with a finding of sexual
9 motivation; or (C) an attempt to commit any crime listed in this
10 subsection (29)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this
12 subsection, been convicted as an offender on at least one occasion,
13 whether in this state or elsewhere, of an offense listed in (b)(i) of
14 this subsection. A conviction for rape of a child in the first degree
15 constitutes a conviction under subsection (29)(b)(i) only when the
16 offender was sixteen years of age or older when the offender committed
17 the offense. A conviction for rape of a child in the second degree
18 constitutes a conviction under subsection (29)(b)(i) only when the
19 offender was eighteen years of age or older when the offender committed
20 the offense.

21 (30) "Postrelease supervision" is that portion of an offender's
22 community placement that is not community custody.

23 (31) "Restitution" means the requirement that the offender pay a
24 specific sum of money over a specific period of time to the court as
25 payment of damages. The sum may include both public and private costs.
26 The imposition of a restitution order does not preclude civil redress.

27 (32) "Risk assessment" means the application of an objective
28 instrument supported by research and adopted by the department for the
29 purpose of assessing an offender's risk of reoffense, taking into
30 consideration the nature of the harm done by the offender, place and
31 circumstances of the offender related to risk, the offender's
32 relationship to any victim, and any information provided to the
33 department by victims. The results of a risk assessment shall not be
34 based on unconfirmed or unconfirmable allegations.

35 (33) "Serious traffic offense" means:

36 (a) Driving while under the influence of intoxicating liquor or any
37 drug (RCW 46.61.502), actual physical control while under the influence
38 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
2 or

3 (b) Any federal, out-of-state, county, or municipal conviction for
4 an offense that under the laws of this state would be classified as a
5 serious traffic offense under (a) of this subsection.

6 (34) "Serious violent offense" is a subcategory of violent offense
7 and means:

8 (a) Murder in the first degree, homicide by abuse, murder in the
9 second degree, manslaughter in the first degree, assault in the first
10 degree, kidnapping in the first degree, or rape in the first degree,
11 assault of a child in the first degree, or an attempt, criminal
12 solicitation, or criminal conspiracy to commit one of these felonies;
13 or

14 (b) Any federal or out-of-state conviction for an offense that
15 under the laws of this state would be a felony classified as a serious
16 violent offense under (a) of this subsection.

17 (35) "Sentence range" means the sentencing court's discretionary
18 range in imposing a nonappealable sentence.

19 (36) "Sex offense" means:

20 (a) A felony that is a violation of chapter 9A.44 RCW, other than
21 RCW 9A.44.130(~~(+10)~~) (11), or RCW 9A.64.020 or 9.68A.090 or a felony
22 that is, under chapter 9A.28 RCW, a criminal attempt, criminal
23 solicitation, or criminal conspiracy to commit such crimes;

24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a sex
26 offense in (a) of this subsection;

27 (c) A felony with a finding of sexual motivation under RCW
28 9.94A.127 or 13.40.135; or

29 (d) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as a sex
31 offense under (a) of this subsection.

32 (37) "Sexual motivation" means that one of the purposes for which
33 the defendant committed the crime was for the purpose of his or her
34 sexual gratification.

35 (38) "Total confinement" means confinement inside the physical
36 boundaries of a facility or institution operated or utilized under
37 contract by the state or any other unit of government for twenty-four
38 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

1 (39) "Transition training" means written and verbal instructions
2 and assistance provided by the department to the offender during the
3 two weeks prior to the offender's successful completion of the work
4 ethic camp program. The transition training shall include instructions
5 in the offender's requirements and obligations during the offender's
6 period of community custody.

7 (40) "Victim" means any person who has sustained emotional,
8 psychological, physical, or financial injury to person or property as
9 a direct result of the crime charged.

10 (41) "Violent offense" means:

11 (a) Any of the following felonies, as now existing or hereafter
12 amended: Any felony defined under any law as a class A felony or an
13 attempt to commit a class A felony, criminal solicitation of or
14 criminal conspiracy to commit a class A felony, manslaughter in the
15 first degree, manslaughter in the second degree, indecent liberties if
16 committed by forcible compulsion, kidnapping in the second degree,
17 arson in the second degree, assault in the second degree, assault of a
18 child in the second degree, extortion in the first degree, robbery in
19 the second degree, drive-by shooting, vehicular assault, and vehicular
20 homicide, when proximately caused by the driving of any vehicle by any
21 person while under the influence of intoxicating liquor or any drug as
22 defined by RCW 46.61.502, or by the operation of any vehicle in a
23 reckless manner;

24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a violent
26 offense in (a) of this subsection; and

27 (c) Any federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony classified as a violent
29 offense under (a) or (b) of this subsection.

30 (42) "Vulnerable adult" means a person:

31 (a) Sixty years of age or older who has the functional, mental, or
32 physical inability to care for himself or herself, or his or her
33 finances;

34 (b) Eighteen years of age or older and has been found by a court to
35 be incapacitated under chapter 11.88 RCW;

36 (c) Eighteen years of age or older and who has a developmental
37 disability as defined under RCW 71A.10.020;

38 (d) Eighteen years of age or older and who is a resident of a
39 facility for adults licensed or required to be licensed by the

1 department of social and health services, including but not limited to
2 nursing homes, adult family homes, and boarding homes; or

3 (e) Eighteen years of age or older and receives services from a
4 home health, hospice, or home care agency as defined in chapter 70.127
5 RCW, or receives similar services from an individual.

6 (43) "Work crew" means a program of partial confinement consisting
7 of civic improvement tasks for the benefit of the community of not less
8 than thirty-five hours per week that complies with RCW 9.94A.135. The
9 civic improvement tasks shall have minimal negative impact on existing
10 private industries or the labor force in the county where the service
11 or labor is performed. The civic improvement tasks shall not affect
12 employment opportunities for people with developmental disabilities
13 contracted through sheltered workshops as defined in RCW 82.04.385.
14 Only those offenders sentenced to a facility operated or utilized under
15 contract by a county or the state, or sanctioned under RCW 9.94A.205,
16 are eligible to participate on a work crew. Offenders sentenced for a
17 sex offense as defined in subsection (36) of this section are not
18 eligible for the work crew program.

19 (~~(43)~~) (44) "Work ethic camp" means an alternative incarceration
20 program designed to reduce recidivism and lower the cost of corrections
21 by requiring offenders to complete a comprehensive array of real-world
22 job and vocational experiences, character-building work ethics
23 training, life management skills development, substance abuse
24 rehabilitation, counseling, literacy training, and basic adult
25 education.

26 (~~(44)~~) (45) "Work release" means a program of partial confinement
27 available to offenders who are employed or engaged as a student in a
28 regular course of study at school. Participation in work release shall
29 be conditioned upon the offender attending work or school at regularly
30 defined hours and abiding by the rules of the work release facility.

31 **Sec. 6.** RCW 9.94A.310 and 1999 c 352 s 2 and 1999 c 324 s 3 are
32 each reenacted and amended to read as follows:

33 (1) TABLE 1
34 Sentencing Grid
35 SERIOUSNESS
36 LEVEL OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more	
1											
2	0	1	2	3	4	5	6	7	8	9 or more	
3	<hr/>										
4	XVI	Life Sentence without Parole/Death Penalty									
5	<hr/>										
6	XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
7		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
8		320	333	347	361	374	388	416	450	493	548
9	<hr/>										
10	XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
11		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
12		220	234	244	254	265	275	295	316	357	397
13	<hr/>										
14	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
15		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
16		164	178	192	205	219	233	260	288	342	397
17	<hr/>										
18	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
19		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
20		123	136	147	160	171	184	216	236	277	318
21	<hr/>										
22	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
23		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
24		102	114	125	136	147	158	194	211	245	280
25	<hr/>										
26	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
27		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
28		68	75	82	89	96	102	130	144	171	198
29	<hr/>										
30	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
31		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
32		41	48	54	61	68	75	102	116	144	171
33	<hr/>										
34	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
35		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
36		27	34	41	48	54	61	89	102	116	144
37	<hr/>										

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
11		12	14	17	20	29	43	54	68	82	96
12											
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16											
17	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
18		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
19		3	8	12	12	16	22	29	43	57	68
20											
21	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
22		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
23		Days	6	9	12	14	18	22	29	43	57
24											
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28											

29 NOTE: Numbers in the first horizontal row of each seriousness category
30 represent sentencing midpoints in years(y) and months(m). Numbers in
31 the second and third rows represent presumptive sentencing ranges in
32 months, or in days if so designated. 12+ equals one year and one day.

33 (2) For persons convicted of the anticipatory offenses of criminal
34 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
35 presumptive sentence is determined by locating the sentencing grid
36 sentence range defined by the appropriate offender score and the
37 seriousness level of the completed crime, and multiplying the range by
38 75 percent.

1 (3) The following additional times shall be added to the
2 presumptive sentence for felony crimes committed after July 23, 1995,
3 if the offender or an accomplice was armed with a firearm as defined in
4 RCW 9.41.010 and the offender is being sentenced for one of the crimes
5 listed in this subsection as eligible for any firearm enhancements
6 based on the classification of the completed felony crime. If the
7 offender is being sentenced for more than one offense, the firearm
8 enhancement or enhancements must be added to the total period of
9 confinement for all offenses, regardless of which underlying offense is
10 subject to a firearm enhancement. If the offender or an accomplice was
11 armed with a firearm as defined in RCW 9.41.010 and the offender is
12 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
13 commit one of the crimes listed in this subsection as eligible for any
14 firearm enhancements, the following additional times shall be added to
15 the presumptive sentence determined under subsection (2) of this
16 section based on the felony crime of conviction as classified under RCW
17 9A.28.020:

18 (a) Five years for any felony defined under any law as a class A
19 felony or with a maximum sentence of at least twenty years, or both,
20 and not covered under (f) of this subsection.

21 (b) Three years for any felony defined under any law as a class B
22 felony or with a maximum sentence of ten years, or both, and not
23 covered under (f) of this subsection.

24 (c) Eighteen months for any felony defined under any law as a class
25 C felony or with a maximum sentence of five years, or both, and not
26 covered under (f) of this subsection.

27 (d) If the offender is being sentenced for any firearm enhancements
28 under (a), (b), and/or (c) of this subsection and the offender has
29 previously been sentenced for any deadly weapon enhancements after July
30 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
31 (4)(a), (b), and/or (c) of this section, or both, any and all firearm
32 enhancements under this subsection shall be twice the amount of the
33 enhancement listed.

34 (e) Notwithstanding any other provision of law, any and all firearm
35 enhancements under this section are mandatory, shall be served in total
36 confinement, and shall run consecutively to all other sentencing
37 provisions, including other firearm or deadly weapon enhancements, for
38 all offenses sentenced under this chapter. However, whether or not a
39 mandatory minimum term has expired, an offender serving a sentence

1 under this subsection may be granted an extraordinary medical placement
2 when authorized under RCW 9.94A.150(4).

3 (f) The firearm enhancements in this section shall apply to all
4 felony crimes except the following: Possession of a machine gun,
5 possessing a stolen firearm, drive-by shooting, theft of a firearm,
6 unlawful possession of a firearm in the first and second degree, and
7 use of a machine gun in a felony.

8 (g) If the presumptive sentence under this section exceeds the
9 statutory maximum for the offense, the statutory maximum sentence shall
10 be the presumptive sentence unless the offender is a persistent
11 offender as defined in RCW 9.94A.030. If the addition of a firearm
12 enhancement increases the sentence so that it would exceed the
13 statutory maximum for the offense, the portion of the sentence
14 representing the enhancement may not be reduced.

15 (4) The following additional times shall be added to the
16 presumptive sentence for felony crimes committed after July 23, 1995,
17 if the offender or an accomplice was armed with a deadly weapon as
18 defined in this chapter other than a firearm as defined in RCW 9.41.010
19 and the offender is being sentenced for one of the crimes listed in
20 this subsection as eligible for any deadly weapon enhancements based on
21 the classification of the completed felony crime. If the offender is
22 being sentenced for more than one offense, the deadly weapon
23 enhancement or enhancements must be added to the total period of
24 confinement for all offenses, regardless of which underlying offense is
25 subject to a deadly weapon enhancement. If the offender or an
26 accomplice was armed with a deadly weapon other than a firearm as
27 defined in RCW 9.41.010 and the offender is being sentenced for an
28 anticipatory offense under chapter 9A.28 RCW to commit one of the
29 crimes listed in this subsection as eligible for any deadly weapon
30 enhancements, the following additional times shall be added to the
31 presumptive sentence determined under subsection (2) of this section
32 based on the felony crime of conviction as classified under RCW
33 9A.28.020:

34 (a) Two years for any felony defined under any law as a class A
35 felony or with a maximum sentence of at least twenty years, or both,
36 and not covered under (f) of this subsection.

37 (b) One year for any felony defined under any law as a class B
38 felony or with a maximum sentence of ten years, or both, and not
39 covered under (f) of this subsection.

1 (c) Six months for any felony defined under any law as a class C
2 felony or with a maximum sentence of five years, or both, and not
3 covered under (f) of this subsection.

4 (d) If the offender is being sentenced under (a), (b), and/or (c)
5 of this subsection for any deadly weapon enhancements and the offender
6 has previously been sentenced for any deadly weapon enhancements after
7 July 23, 1995, under (a), (b), and/or (c) of this subsection or
8 subsection (3)(a), (b), and/or (c) of this section, or both, any and
9 all deadly weapon enhancements under this subsection shall be twice the
10 amount of the enhancement listed.

11 (e) Notwithstanding any other provision of law, any and all deadly
12 weapon enhancements under this section are mandatory, shall be served
13 in total confinement, and shall run consecutively to all other
14 sentencing provisions, including other firearm or deadly weapon
15 enhancements, for all offenses sentenced under this chapter. However,
16 whether or not a mandatory minimum term has expired, an offender
17 serving a sentence under this subsection may be granted an
18 extraordinary medical placement when authorized under RCW 9.94A.150(4).

19 (f) The deadly weapon enhancements in this section shall apply to
20 all felony crimes except the following: Possession of a machine gun,
21 possessing a stolen firearm, drive-by shooting, theft of a firearm,
22 unlawful possession of a firearm in the first and second degree, and
23 use of a machine gun in a felony.

24 (g) If the presumptive sentence under this section exceeds the
25 statutory maximum for the offense, the statutory maximum sentence shall
26 be the presumptive sentence unless the offender is a persistent
27 offender as defined in RCW 9.94A.030. If the addition of a deadly
28 weapon enhancement increases the sentence so that it would exceed the
29 statutory maximum for the offense, the portion of the sentence
30 representing the enhancement may not be reduced.

31 (5) The following additional times shall be added to the
32 presumptive sentence if the offender or an accomplice committed the
33 offense while in a county jail or state correctional facility as that
34 term is defined in this chapter and the offender is being sentenced for
35 one of the crimes listed in this subsection. If the offender or an
36 accomplice committed one of the crimes listed in this subsection while
37 in a county jail or state correctional facility as that term is defined
38 in this chapter, and the offender is being sentenced for an
39 anticipatory offense under chapter 9A.28 RCW to commit one of the

1 crimes listed in this subsection, the following additional times shall
2 be added to the presumptive sentence determined under subsection (2) of
3 this section:

4 (a) Eighteen months for offenses committed under RCW
5 69.50.401(a)(1) (i) or (ii) or 69.50.410;

6 (b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)
7 (iii), (iv), and (v);

8 (c) Twelve months for offenses committed under RCW 69.50.401(d).

9 For the purposes of this subsection, all of the real property of a
10 state correctional facility or county jail shall be deemed to be part
11 of that facility or county jail.

12 (6) An additional twenty-four months shall be added to the
13 presumptive sentence for any ranked offense involving a violation of
14 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

15 (7) An additional two years shall be added to the presumptive
16 sentence for vehicular homicide committed while under the influence of
17 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
18 prior offense as defined in RCW 46.61.5055.

19 (8) In a criminal case in which there has been a special allegation
20 and evidence establishing that the victim was a vulnerable adult at the
21 time of the commission of the crime, the court shall make a finding of
22 fact of whether the victim was a vulnerable adult at the time of the
23 commission of the crime, or if a jury trial is had, the jury shall, if
24 it finds the defendant guilty, also find a special verdict as to
25 whether the victim was a vulnerable adult at the time of the commission
26 of the crime.

27 (a) The following additional times must be added to the presumptive
28 sentence if the offender or an accomplice committed the offense against
29 a vulnerable adult:

30 (i) Twenty-four months for a felony defined by law as a class A
31 felony or with a maximum sentence of at least twenty years, or both;

32 (ii) Eighteen months for a felony defined by law as a class B
33 felony or with a maximum sentence of ten years, or both;

34 (iii) Twelve months for a felony defined by law as a class C felony
35 or with a maximum sentence of five years, or both.

36 (b) Notwithstanding any other provision of law, all enhancements
37 under this subsection are mandatory, must be served in total
38 confinement, and must not run concurrently with any other sentencing
39 provisions.

1 (c) Further, nothing in this subsection precludes the court from
2 considering the victim's vulnerability as an aggravating circumstance
3 under RCW 9.94A.390(2)(b) in imposing an exceptional sentence under RCW
4 9.94A.120(2).

5 **Sec. 7.** RCW 9.94A.370 and 1999 c 143 s 16 are each amended to read
6 as follows:

7 (1) The intersection of the column defined by the offender score
8 and the row defined by the offense seriousness score determines the
9 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The
10 additional time for deadly weapon findings, for crimes committed
11 against vulnerable adults, or for those offenses enumerated in RCW
12 9.94A.310(4) that were committed in a state correctional facility or
13 county jail shall be added to the entire presumptive sentence range.
14 The court may impose any sentence within the range that it deems
15 appropriate. All presumptive sentence ranges are expressed in terms of
16 total confinement.

17 (2) In determining any sentence, the trial court may rely on no
18 more information than is admitted by the plea agreement, or admitted,
19 acknowledged, or proved in a trial or at the time of sentencing.
20 Acknowledgement includes not objecting to information stated in the
21 presentence reports. Where the defendant disputes material facts, the
22 court must either not consider the fact or grant an evidentiary hearing
23 on the point. The facts shall be deemed proved at the hearing by a
24 preponderance of the evidence. Facts that establish the elements of a
25 more serious crime or additional crimes may not be used to go outside
26 the presumptive sentence range except upon stipulation or when
27 specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and (h).

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 9A.42 RCW
29 to read as follows:

30 (1) A person is guilty of the crime of criminal mistreatment in the
31 third degree if the person is the parent of a child, is a person
32 entrusted with the physical custody of a child or other dependent
33 person, or is a person employed to provide to the child or dependent
34 person the basic necessities of life, and either:

35 (a) With criminal negligence, creates an imminent and substantial
36 risk of substantial bodily harm to a child or dependent person by
37 withholding any of the basic necessities of life; or

1 (b) With criminal negligence, causes substantial bodily harm to a
2 child or dependent person by withholding any of the basic necessities
3 of life.

4 (2) Criminal mistreatment in the third degree is a gross
5 misdemeanor.

6 **Sec. 9.** RCW 9A.42.040 and 1986 c 250 s 4 are each amended to read
7 as follows:

8 RCW 9A.42.020 (~~(and)~~), 9A.42.030, and section 8 of this act do not
9 apply to (~~(a)~~) decisions to withdraw life support systems made in
10 accordance with (~~law by a health care professional and family members~~
11 or others with a legal duty to care for the patient) chapter 7.70 or
12 70.122 RCW by the dependent person, his or her legal surrogate, or
13 others with a legal duty to care for the dependent person.

14 **Sec. 10.** RCW 9A.42.045 and 1997 c 392 s 512 are each amended to
15 read as follows:

16 RCW 9A.42.020 (~~(and)~~), 9A.42.030, and section 8 of this act do not
17 apply when a terminally ill or permanently unconscious person or his or
18 her (~~(designee)~~) legal surrogate, as set forth in chapter 7.70 RCW,
19 requests (~~(palliative care)~~), and the person receives, palliative care
20 from a licensed home health agency, hospice agency, nursing home, or
21 hospital (~~(who is)~~) providing care under the medical direction of a
22 physician. As used in this section, the terms "terminally ill" and
23 "permanently unconscious" have the same meaning as "terminal condition"
24 and "permanent unconscious condition" in chapter 70.122 RCW.

25 NEW SECTION. **Sec. 11.** Section captions used in sections 1 through
26 4 of this act are not part of the law.

27 NEW SECTION. **Sec. 12.** Sections 1 through 4 and 11 of this act
28 constitute a new chapter in Title 5 RCW.

--- END ---